

COTTONWOOD HEIGHTS

RESOLUTION NO. 2009-05

A RESOLUTION APPROVING  
AN INDEPENDENT CONTRACTOR AGREEMENT  
WITH BRIAN ALLEN D/B/A CAPITOL HILL ADVISORS  
(2008-09 FISCAL YEAR)

**WHEREAS**, the city council (the "*Council*") of the city of Cottonwood Heights (the "*City*") met in regular session on 24 February 2009 to consider, among other things, approving an independent contractor agreement (the "*Agreement*") with Brian Allen d/b/a Capitol Hill Advisors ("*Mr. Allen*") whereunder Mr. Allen would provide legislative consulting, lobbyist and related services to the City during the City's 2008-09 fiscal year; and

**WHEREAS**, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

**WHEREAS**, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve the City's entry into the Agreement as proposed;

**NOW, THEREFORE, BE IT RESOLVED** by the Cottonwood Heights city council that the attached Agreement is hereby approved, and that the City's mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City.

This Resolution, assigned no. 2009-05, shall take effect immediately upon passage.

**PASSED AND APPROVED** effective 24 February 2009.

**COTTONWOOD HEIGHTS CITY COUNCIL**

By

  
Kelvyn H. Cullimore, Jr., Mayor

**ATTEST:**

  
Linda W. Dunlavy, Recorder

**VOTING:**

Kelvyn H. Cullimore, Jr.	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Gordon M. Thomas	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Don J. Antczak	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Bruce T. Jones	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

**DEPOSITED** in the office of the City Recorder this 24<sup>th</sup> day of February 2009.

**RECORDED** this 25 day of February 2009.

WST\CH\518809.1

# Independent Contractor Agreement

**THIS INDEPENDENT CONTRACTOR AGREEMENT** (this "*Agreement*") is made effective 1 July 2008 by **COTTONWOOD HEIGHTS**, a municipality of the state of Utah whose address is 1265 Fort Union Blvd., Suite 250, Cottonwood Heights, UT 84047 ("*City*"), and **BRIAN R. ALLEN** d/b/a **CAPITOL HILL ADVISORS**, whose address is P.O. Box 711759, Cottonwood Heights, UT 84171 ("*Allen*").

## RECITALS:

- A. Allen has significant expertise and experience, and is legally registered, as a lobbyist.
- B. Allen has performed lobbying services for City during, *inter alia*, the 2006, 2007 and 2008 sessions of the Utah Legislature (the "*Legislature*"), and desires to continue to perform lobbying services for City during the City's 2008-2009 fiscal year.
- C. City desires to retain Allen on an independent contractor basis to act as City's principal lobbyist and to perform other related functions for City on the terms and conditions specified in this Agreement.
- D. Allen desires to be so retained by City as an independent contractor.
- E. The parties have determined that it is mutually advantageous to enter into this Agreement.

## AGREEMENT:

**NOW, THEREFORE**, in consideration of the premises, the mutual covenants and conditions hereinafter set forth, and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Engagement.** City hereby engages Allen, and Allen hereby accepts such engagement, to perform the Services (as hereinafter defined).

2. **Services, Independent Activities.**

(a) **Services.** Allen is engaged to serve as City's principal lobbyist, performing the following functions: (1) full-time presence on Capitol Hill during the Legislature's 2009 general session; (2) promoting legislation or amendments to legislation as requested by City; (3) attendance at all relevant interim meetings and special sessions of the Legislature, or committees thereof, during the year; (4) weekly updates to City of lobbying activities during the general session and any special sessions, and monthly updates during the balance of the year; (5) attendance and reporting at city council meetings as requested by City; (6) other meetings as requested by City's mayor, city council or manager; (7) attendance at Salt Lake County Council or other related meetings when issues relevant to City are being discussed; (8) attendance at Utah Transit Authority, Cottonwood Heights Recreation Center, and other government agency meetings when issues relevant to City are being discussed; (9) attendance at meetings of the Utah League of Cities and Towns, or committees thereof, as needed; (10) working with individual members of government agencies or other service

providers, as directed by City's mayor, city council or manager; (11) actively seeking out sources of community development or other infrastructure improvement funding or grants from local, state, federal or private resources; (12) directing the efforts of Allen's employees and subcontractors in a manner to best protect City's interests and achieve City's goals; and (13) performing such additional lobbyist-type duties as City may from time to time reasonably designate (collectively, the "Services"). Allen shall be actively involved in personally performing the Services on the basis specified above, devoting Allen's time, attention and best efforts to City's affairs.

(b) Independent Activities. As an independent contractor, Allen freely may expend time (while not on duty for City) for personal or outside business, charitable or professional activities. Such outside activities shall not be deemed a breach of this Agreement, provided that they do not materially interfere with the Services to be rendered to City hereunder. Allen shall not, without City's express prior written consent (which consent shall not be unreasonably withheld), engage in any activity competitive with or adverse to City's interests, whether alone, as a partner, or as an officer, director, employee, shareholder, member or owner of any other entity, or as a trustee, fiduciary, or other representative of any other activity.

3. Focus Areas. Allen's Services shall focus on such issues as may be designated by City from time to time.

4. Term. Subject to the provisions regarding termination set forth in section 8 below, Allen's term of engagement shall commence 1 July 2008 and shall terminate on 30 June 2009. The term of this Agreement may be extended upon the written consent of both City and Allen.

5. Standards. Allen shall perform Allen's duties under this Agreement in accordance with (a) all legal requirements; (b) all applicable professional standards and practices; and (c) such other standards as may, from time to time, be applicable during the term of this Agreement.

6. Compensation.

(a) Standard. Allen's base compensation shall total \$36,000 through 30 June 2009, paid in equal installments of \$3,000 per calendar month. Allen also shall be entitled to reimbursement of any actual, out-of-pocket costs necessarily advanced by Allen in his performance of the Services in accordance with City's reimbursement policies.

(b) Special. City reserves the right to expand the Services to include representation of the interests of City, Sandy, Midvale, Draper and Alta (the "Sponsors") in successful consummation of formation and commencement of full operations of the Canyons School District ("CSD") under the current statutory framework. Allen vigilantly shall monitor any proposed legislation that may adversely affect CSD's formation and future operation under the current statutory framework and, in consultation with City, shall engage in such lobbying efforts as shall be appropriate and advisable under the circumstances. If any potentially adverse legislation is introduced during the term of this Agreement, then City, on behalf of the Sponsors, shall pay Allen up to an additional \$35,000 in special compensation for enhanced Services under this subsection 6(b). Allen may retain subcontractors (which City reserves the right to approve) to assist Allen in

performing those enhanced Services. The time for Allen's performance of, and for City's payment for, such enhanced Services shall be as reasonably, mutually agreed by the parties.

7. **Status.** In performing the Services, Allen shall at all times be an independent contractor, and not an employee, of City. As an independent contractor, Allen shall not be entitled to any benefits or perquisites offered by City to its employees, such as insurance coverage, paid vacation, retirement plan funding, or any other items. Instead, Allen's sole compensation for performance of the Services shall be the compensation and costs reimbursement described in section 6 above.

8. **Termination.** This Agreement shall be terminated upon the happening of any of the following events:

(a) **For Cause.** For cause upon ten (10) days' prior written notice and opportunity to cure by the terminating party where the other party has materially breached any provision of this Agreement or violated any statutory or common law duty or obligation to the terminating party, including, without limitation, Allen's failure to perform any of Allen's obligations hereunder to City's reasonable satisfaction at any time;

(b) **Without Cause.** Without cause at any time upon at least 90 days' prior written notice by a party to the other;

(c) **Mutual Consent.** Whenever City and Allen mutually agree in writing to terminate this Agreement;

(d) **Death.** Upon Allen's death; or

(e) **Conduct.** If Allen engages in any fraudulent or dishonest conduct of any type whatsoever, or if City reasonably determines (in view of prevailing community standards in Cottonwood Heights, Utah) that Allen has engaged in personal conduct which would injure the reputation of City or otherwise adversely affect City's interests if Allen were retained as an independent contractor of City.

9. **Rules, Regulations and Policies.** Allen shall observe and comply with the rules and regulations of City as adopted by City respecting performance of the Services, and shall carry out and to perform orders, directions and policies announced to Allen by City from time to time, either orally or in writing.

10. **Nondisclosure of Confidential Information.** Allen acknowledges that, as a result of his engagement by City, Allen may be provided access to, and otherwise may have the opportunity to acquire and use, confidential information of a special and unique nature and value relating to City's affairs that is not known to the general public. Such information made known to or learned by Allen as a result of Allen's engagement hereunder shall be referred to herein as the "*Confidential Information.*"

As a material inducement to City to engage Allen pursuant to this Agreement, Allen covenants and agrees that Allen shall not, at any time during or following the term of this Agreement, directly or indirectly divulge or disclose to any third party, for any purpose whatsoever, any of the Confidential Information which has been obtained by or disclosed to Allen as a result of his engagement by City.

In the event of a breach or threatened breach by Allen of any of the provisions of this section 10, City, in addition to and not in limitation of any other rights, remedies or damages available to City at law or in equity, shall be entitled to injunctive relief restraining and permanently prohibiting any such breach by Allen or any other person or entity directly or indirectly acting for or with Allen.

Upon termination of this Agreement, Allen shall not be entitled to keep or preserve records, files, documents and information of any type which are particular to City. Any and all records, files, documents and information of all types prepared in connection with Allen's engagement hereunder are and shall remain City's property, notwithstanding that such items may have been prepared, transcribed or generated by Allen.

11. **General Provisions.** The following provisions are also an integral part of this Agreement:

(a) **Binding Agreement.** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

(b) **Captions.** The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent hereof.

(c) **Counterparts.** This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

(d) **Severability.** The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable or invalid provision shall not affect the other provisions of this Agreement.

(e) **Waiver of Breach.** Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of or consent to any subsequent breach of this Agreement.

(f) **Cumulative Remedies.** The rights and remedies of the parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of any other right, remedy or priority allowed by law.

(g) **Amendment.** This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

(h) Time of Essence. Time is the essence of this Agreement.

(i) Interpretation. This Agreement shall be interpreted, construed and enforced according to the substantive laws of the state of Utah.

(j) Attorneys' Fees. In the event any action or proceeding is brought by either party to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees, whether such sums are expended with or without suit, at trial, on appeal or in any bankruptcy or insolvency proceeding.

(k) Notice. Any notice or other communication required or permitted to be given hereunder shall be deemed to have been received (a) upon personal delivery or actual receipt thereof or (b) within two (2) days after such notice is deposited in the United States mail, postage prepaid and certified and addressed to the parties at their respective addresses set forth above or to such other address(es) as a party may specify to the other in writing at any time during the term of this Agreement.

(l) Assignment. Except (i) as provided in section 6(b) above, and (ii) for Allen's own employees, Allen may not assign his rights or delegate his duties hereunder to any third party without City's prior written consent, which City may withhold in its sole, unfettered, discretion.

**DATED** effective the date first above written.

**CITY:**

**ATTEST:**

**COTTONWOOD HEIGHTS**, a Utah municipality

\_\_\_\_\_  
**Linda Dunlavy**, Recorder

By: \_\_\_\_\_  
**Kelvyn H. Cullimore, Jr.**, Mayor

**ALLEN:**

**CAPITOL HILL ADVISORS**

\_\_\_\_\_  
**Brian R. Allen**